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October 27, 2004

BY HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

Re: Petition for Declaratory Ruling of Global Crossing Telecommunications, Inc.

Dear Ms. Dortch:

On behalf of Global Crossing Telecommunications, Inc., enclosed for filing is an original and four (4) copies of the above-referenced Petition for Declaratory Ruling ("Petition").

Because this Petition seeks interpretation of existing tariff language in the course of a primary jurisdiction referral between private parties, we ask that this Petition not be put on public notice or subject to comment, as that will only serve to delay the judicial process. A Commission ruling on this Petition will not result in a rule of general applicability under 5 U.S.C. § 553, but will resolve issues related to this case alone.

Please date-stamp the duplicate copy of this filing and return it to the courier. If you have questions about this filing, please contact the undersigned at (703) 918-2311. Thank you for your assistance with this matter.

Respectfully submitted,



Tamara E. Connor

Enclosures

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

GLOBAL CROSSING)
TELECOMMUNICATIONS, INC.)

Petition for Declaratory Ruling Concerning)
Southwestern Bell Telephone, L.P.)
Tariff F.C.C. No. 1)

WCB Docket No. _____

RECEIVED
OCT 27 2004
Federal Communications Commission
Office of Secretary

To: Chief, Wireline Competition Bureau

PETITION FOR DECLARATORY RULING

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October 27, 2004

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Summary

By this Petition for Declaratory Ruling, Global Crossing Telecommunications, Inc. ("Global Crossing") seeks clarification of the meaning and application of two provisions of Southwestern Bell Telephone, L.P.'s ("SWBT") interstate access tariff. This issue was referred to the Commission on June 14, 2004 by the U.S. District Court of Missouri, a court proceeding in which the underlying dispute between Global Crossing and SWBT remains pending. This petition provides a framework for the Commission to respond to the referral from the Eastern District of Missouri.

The crux of the issue presented is simple: which of two SWBT access tariff provisions applies to mobile-phone traffic in instances in which both parties agree the geographic origination point of the calls is "unknown." SWBT's FCC Tariff No. 73 Section 2.4.1(A)(1) states that where the origination point is "unknown," the FCC's prescribed EES method must be applied to determine whether calls are interstate or intrastate. On the other hand, Section 2.4.1(A)(2)(a) states that where the geographic point of origin is "known" based on the call detail, the call is interstate or intrastate based on the call detail. Both Parties agree that calls originated from mobile phones fall into the "unknown" category. Despite this fact, however, SWBT insists on billing Global Crossing under the wrong tariff section, thereby overcharging Global Crossing by about \$100,000 per month.

This Petition for Declaratory Ruling asks the FCC (upon SWBT's Motion for Referral) to interpret which of these two tariff provisions applies. While the answer seems obvious on its face, SWBT contends that broader policy issues are raised. Global Crossing submits that any prospective changes in policy are irrelevant to which tariff provision applies today. If SWBT believes changes in policy are needed, it is free to seek a rulemaking proceeding after it stops overcharging Global Crossing by \$100,000 per month and after it refunds the more than \$2 million it has already overcharged Global Crossing.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| GLOBAL CROSSING |) | WCB Docket No. _____ |
| TELECOMMUNICATIONS, INC. |) | |
| |) | |
| Petition for Declaratory Ruling Concerning |) | |
| Southwestern Bell Telephone, L.P. |) | |
| Tariff F.C.C. No. 1 |) | |

To: Chief, Wireline Competition Bureau

PETITION FOR DECLARATORY RULING

Global Crossing Telecommunications, Inc. ("Global Crossing"), by its attorneys and pursuant to Sections 1.1 and 1.2 of the Commission's Rules, 47 C.F.R. §§ 1.1, 1.2, hereby petitions the Federal Communications Commission ("FCC" or "Commission") to issue a declaratory ruling concerning the meaning of certain terms contained in the Tariff F.C.C. No. 73 of Southwestern Bell Telephone, L.P. ("SWBT"). This ruling is necessary because SWBT is relying on procedures for the calculation of interstate access charges that are wholly inconsistent with its Tariff F.C.C. No. 73 and the Commission's jurisdictional separations process. When confronted with these facts, SWBT has sought to avoid its federal tariff obligations and FCC policies and rulings mandating those obligations. This issue was referred to the Commission on June 14, 2004 by the U.S. District Court of the Eastern District of Missouri, a court proceeding in which an underlying dispute between Global Crossing and SWBT remains pending. *Order, Global Crossing Telecommunications, Inc. v. Southwestern Bell Telephone, L.P.*, Case No. 4: 04CV00319 ERW (staying Global Crossing's case against Southwestern Bell pending FCC

review) ("*Global Crossing v. SWBT*").¹ Global Crossing files this petition to provide a framework for the Commission to respond to the referral from the Eastern District of Missouri.

Question for Declaratory Ruling:

Global Crossing presents one question for review.

In those cases where the actual originating geographic location of a mobile telephone call is "unknown," must SWBT honor the terms of its federal access tariff, which designates the "network entry" point as the originating point of the call for purposes of jurisdictional analysis, a process that is referred to as the "Entry-Exit Surrogate" ("EES") method contained in SWBT Tariff F.C.C. No. 73 (Section 2.4.1(A)(1))?

Global Crossing and SWBT agree that the originating location of mobile phone traffic is "not known."² As the Act requires, the Commission has stated a wireless call point of origin is determined by the physical location of the caller.³ Therefore, Global Crossing asks for a declaratory ruling stating that if the location of the mobile caller is unknown, the section of

¹ On March 17, 2004, Global Crossing filed an action against SWTB in the U.S. District Court for the Eastern District of Missouri in which Global Crossing raised, in part, the same issue as the one set forth in this Petition. (Complaint attached at A, 1.) Upon SWBT's motion to dismiss, however, the district court stayed Global Crossing's action while the parties sought to refer the underlying issue to the Commission for resolution. *Order, Global Crossing Telecommunications, Inc. v. Southwestern Bell Telephone, L.P.*, Case No. 4: 04CV00319 ERW (staying Global Crossing's case against Southwestern Bell pending FCC review) ("*Global Crossing v. SWBT*") (attached at A, 3). No substantive action has been taken by the FCC pursuant to the referral. This Petition is being filed in order to expedite the process and obtain a Commission ruling in a timely fashion.

A compilation of the record before the court is annexed hereto as Attachment A. Relevant excerpts from SWBT's Tariff F.C.C. No. 73 are annexed hereto as Attachment B.

² "The ANI associated with a cellular customer may be provided on such calls, but not the precise geographical location of the cellular customer making the call. SBC Missouri cannot determine from the ANI whether the caller, as the time he is talking, is in Missouri, Kansas, Colorado, Utah, Nevada or California." "Defendant's Memorandum of Law in Support of its Motion to Dismiss Based Upon the Doctrine of Primary Jurisdiction," *Global Crossing v. SWBT*, at 5 (attached at A, 5).

³ See 47 U.S.C. § 153(22).

SWBT's access tariff relating to how to charge for an "unknown" call be applied.

Background

Global Crossing is a nationwide interexchange carrier ("IXC") providing, among other services, wholesale interexchange telephone services to mobile phone telephone carriers to carry and connect long distance, interstate calls made from mobile telephones. This service requires Global Crossing to terminate long distance mobile phone calls in the various states serviced by Southwestern Bell Telephone, L.P. ("SWBT"). SWBT, an incumbent local exchange carrier ("ILEC"), provides interstate telephone access services under federal tariffs to IXCs, such as Global Crossing. This petition for Declaratory Ruling asks the Commission to resolve a controversy between Global Crossing and SWBT and make certain that services purchased by Global Crossing out of SWBT's federal access tariff to terminate long distance phone calls placed from mobile phones served by wireless companies that use Global Crossing interexchange services must be charged consistent with the terms of the SWBT's Tariff F.C.C. No. 73 and the Commission's jurisdictional separations process.

Discussion

- 1. Cellular and wireless mobile telephones make interstate calls regardless of the telephone number assigned to the telephone.**

Cellular and other wireless mobile telephones are assigned standard telephone numbers with a particular geographic designation, typically by area code. For example, a wireless mobile phone purchased in Washington, D.C. will likely have a phone number beginning with the local, 202, area code. Mobile phone customers, however, make calls to phones with different area codes as readily as to phones in the same area code. Interconnection of wireless networks with the "plain old telephone system" ("POTS") allows mobile phone users to make a call while within or outside of the area code region associated with their mobile phone. A Washington,

D.C. phone customer with a Washington, D.C. area code (202), for example, can just as easily call a SWBT customer in Missouri while in Missouri as he could that same customer SWBT customer in Missouri while traveling in Virginia.

Although the underlying process of connecting both types of calls – calls with the same area code and geographic region and calls from different area code and geographic regions – is invisible to the customer, there is a difference in the manner carriers handle the calls. Local wireless calls (calls made while within the same area code region) and long distance wireless calls (calls made while located in different area code regions) are handled and billed differently among connecting local and IXC carriers. The interstate, long distance call often requires the mobile phone company to contract with an interstate long distance carrier, such as Global Crossing, to connect the call in the long distance location, regardless of the phone numbers of the calling and called parties.

Global Crossing provides wholesale long distance service for mobile phone companies and, in order to complete calls, purchases call termination services – in other words, terminating access – from SWBT pursuant to its tariffs. The terminating access is one part of three general functions Global Crossing performs for mobile carriers with long distance (typically interstate) needs. Global Crossing: (1) picks up the call from the wireless carrier, (2) carries the call to the state in which the called party is located, and (3) delivers the call to the local telephone company (usually the ILEC) where the called person is physically located. With respect to jurisdictionally interstate calls, local access providers, such as SWBT, charge (or, at least, should charge) Global Crossing for terminating access services pursuant to the terms of their federal access tariffs for the third function.

The amount charged to Global Crossing by SWBT for terminating the long distance

mobile phone calls to a customer on the SWBT local exchange network depends upon whether SWBT is terminating an interstate call (a call made from *outside the state* to the local carrier's customer) or an intrastate call (a call made from *within the state* to the local carrier's customer). Typically, SWBT charges Global Crossing more for terminating intrastate calls than SWBT does for terminating interstate calls. Although SWBT performs the exact same function for both (intrastate and interstate) access services, SWBT charges Global Crossing substantially less for terminating a call from Washington, D.C. to Kansas City than it does for terminating a call made from St. Louis to Kansas City. As a result, SWBT has an incentive for attempting to classify the jurisdictional nature of each such call as intrastate.

2. The decades-old jurisdictional separations process and SWBT's Tariff F.C.C. No. 73 sets the mandatory framework to consider mobile phone traffic.

The mobility of wireless telephones causes the jurisdictional nature of calls originating from such telephones to be incapable of determination solely from SWBT's call records that contain the originating and terminating telephone numbers. Here, both parties agree that the origin of the mobile-phone traffic is "unknown."⁴ Global Crossing has provided SWBT information demonstrating that certain of these wireless calls can only be properly characterized as interstate, notwithstanding the appearance of being intrastate on SWBT's call records. Putting those facts aside, Global Crossing asks the Commission to declare that SWBT is bound by the Commission's long-standing separations process and the terms of its own Tariff F.C.C. No. 73

⁴ "The ANI associated with a cellular customer may be provided on such calls, but not the precise geographical location of the cellular customer making the call. SBC Missouri cannot determine from the ANI whether the caller, as the time he is talking, is in Missouri, Kansas, Colorado, Utah, Nevada or California." "Defendant's Memorandum of Law in Support of its Motion to Dismiss Based Upon the Doctrine of Primary Jurisdiction," *Global Crossing v. SWBT*, at 5 ("*Defendant's Motion to Dismiss*") (attached at A, 5).

(which are the product of the FCC's prescription) in resolving access charge disputes "when the customer does not have sufficient data to determine jurisdiction."⁵ In other words, where the parties agree that the jurisdictional nature of the calls in question is "unknown," is SWBT obliged to apply the terms of its own Tariff F.C.C. No. 73 which incorporates the Commission's prescribed jurisdictional separations process?

The Communications Act defines the jurisdictional spheres of the FCC and state public utility commissions. Congress assigned to the FCC, under the Communications Act, exclusive authority to determine matters of "jurisdictional separations," *i.e.*, whether a call is properly characterized as intra- or interstate. Once the FCC resolved such matters, tariff filers, such as SWBT, have been obligated to follow the FCC's jurisdictional determinations, and state commissions are without authority to alter the FCC's jurisdictional determination. After the FCC's prescribed "jurisdictional separations" method is applied, the resulting interstate calls are subject to FCC tariffs and authority and the intrastate calls are subject to state public utility commission tariffs and authority.

The FCC has consistently followed the principle that the factors to be used in identifying the jurisdictional character of any call are the actual originating and terminating geographic locations of the call, regardless of where the call travels in order to get from one point to the other.⁶ If the actual points are known, no further analysis of the originating or terminating

⁵ *SWBT's Tariff F.C.C. No. 73*, § 2.4.1(A)(1) (italics added) (Attachment A).

⁶ *See, e.g.*, In re GTE Tel. Operating Cos., *Memorandum Opinion and Order*, 13 FCC Rcd 22, 466, ¶ 17 ("[T]he Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."); In re Teleconnect Comp., *Memorandum Opinion and Order*, 10 FCC Rcd 1626, §§ 12-14, (1995) (noting that jurisdiction is based upon end-to-end nature of the communications and that the FCC regulates communications as "interstate" when examined

... Continue

aspects of the call is warranted for purposes of determining whether the telephone call is interstate or intrastate.⁷ The Commission has made clear the method to determine whether a call is “interstate” in nature and required carriers to use interstate access tariffs to charge for interstate access service.⁸

from inception to completion and noting that there is no basis for distinguishing between a call’s jurisdictional nature and its status as intrastate or interstate for billing purposes), *aff’d sub nom.*, *Southwestern Bell Tel. Co.*, 116 F.3d 593 (D.C. Cir. 1997); *In re N.Y. Tel. Co., Memorandum Opinion and Order*, 76 F.C.C. 2d 349 at ¶ 9 (1980) (citing *United States v. AT&T*, 57 F.Supp. 451, 454 (S.D.N.Y. 1994), *aff’d sub nom.*, *Hotel Astor, Inc. v. United States*, 325 U.S. 837 (1945) (“That the Communications Act contemplates the regulation of interstate wire communication from its inception to its completion is confirmed by the language of the statute and by judicial decisions.”)).

⁷ Indeed, the Commission need go no further than the Communication Act that defines “Interstate Communication” as a “communication or transmission (A) from any State to any other State.” 47 U.S.C. § 153(22).

⁸ See, e.g. *In re Rules and Policies Regarding Calling Number Identification Service-Caller ID*, 10 FCC Rcd. 11,700, 11,726-27 (1995) (noting that it would not be possible to determine the jurisdictional nature of telephone calls to non-geographically assigned phone numbers (such as 500, 700, 800, and 900 numbers) as proposed by switch manufacturers because the information “about the *geographical location* of the called party” would not be available to the party responsible for determining jurisdiction, making it impossible for that party to properly characterize the calls as intrastate or interstate); *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 746 F.2d 1492, 1497-98 (D.C. Cir. 1984) (upholding FCC assertion of jurisdiction under the interstate commerce clause over facilities located within a single state – intrastate facilities – that would be used “to terminate communications which originate in other states”); *North Carolina ex rel. Utils. Comm’n v. Thrifty Call, Inc.*, 571 S.E.2d 622, 629 (N.C. Ct. App. 2002) (noting that “a debit card call that originates and ends in the same state is an intrastate call, even if its processed through an 800 switch located in another state”) (quoting *In re the Time Machine, Inc.*, 11 FCC Rcd. 1186, 1190 (1995)); *In re Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 14 FCC Rcd 3689, 3702 (1999) (noting that while “a call that originates and terminates in a single state is jurisdictionally intrastate, and a call that originates in one state and terminates in a different state (or country) is jurisdictionally interstate[.]” determining jurisdiction of specific Internet traffic is difficult because of difficulties in “identifying the geographical destinations” of such traffic but concluding using “end-to-end” analysis that a substantial portion of Interstate traffic is interstate), *vacated on other grounds*, *Bell Atl. Tel. Co. v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000); *Petition for Emergency Relief & Declaratory Ruling filed by BellSouth Corp.*, 7 FCC Rcd 1619 (1992) (finding that calls to a voice mail service are jurisdictionally interstate because “[w]hen the caller is out-of-state, there is a continuous

... Continue

a) **SWBT is bound by the terms of its Tariff F.C.C. No. 73.**

It is undisputed that the jurisdiction of mobile-originated traffic is "unknown."⁹ Global Crossing asks the Commission to affirm here that SWBT is bound by the Commission jurisdictional separations processes that are incorporated in SWBT's Tariff F.C.C. No. 73. The tariff provisions at issue are especially worthy of this declaratory ruling because they were inserted at the direction of the Commission and a federal-state Joint Board.

The federal-state Joint Board created a reporting process to track what percent of usage of the ILEC's network was interstate and what percent was intrastate for billing purposes. It is referred to as the "Percent Interstate Usage" or "PIU" method. The core of the PIU method is that audits be adopted as the proper verification methodology so that charges may be properly allocated.¹⁰ This PIU audit and reporting process was meant to protect *both* the ILEC and its IXC customer in the event of a dispute. Thus, the Joint Board sought to balance the rights of ILECs and IXCs in recommending procedures to be utilized for PIU verification.¹¹ The FCC adopted this Joint Board recommendation and instructed the ILECs to include PIU audits as a

path of communications across state lines between the caller and the voice mail service"); *In re New York Tel. Co.*, 76 F.C.C.2d 349, at ¶ 6 (noting that calls originating at a subscriber's premise in New York and terminating at a location in Washington are interstate in nature).

⁹ "With respect to wireless originated calls to wireline customers, SBT cannot determine, based solely upon the originating ANI, whether the physical location of the wireless customer is within the same state as the physical location of the called wireline customer." "Statement of Undisputed Material Facts, Statement of Issue Presented and Proposed Procedural Schedule," para. 5 (attached at A, 5); *see also Defendant's Motion to Dismiss* at 5 (attached at A, 3).

¹⁰ *See Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, Recommended Decision and Order*, 4 FCC Rcd 1966 (1989) ("Joint Board Recommended Decision and Order").

¹¹ *Id.* ¶ 76.

part of the dispute resolution mechanism in their access tariffs.¹²

The FCC convened the Joint Board to review the PIU process because it is an inherent part of the federal-state separations process. The Communications Act gives the FCC exclusive jurisdiction over separations decisions pursuant to Section 152 of the Act, but the Commission prefers that such jurisdiction be exercised after receiving the recommendation of a Joint Board made up of federal and state regulators pursuant to Section 410 of the Act.¹³ This exclusive jurisdiction was granted because matters of allocation inherently must be uniform throughout the nation to ensure fairness and consistency. As the Commission stated in connection with its PIU deliberations, "in the absence of a uniform measurement method for jurisdictional separations, a LEC could conceivably recover in both the interstate and intrastate jurisdiction for the same investment and expenses, or fail to recover the costs involved in either jurisdiction."¹⁴

- b) The mandatory procedure to determine the jurisdictional nature of calls of "unknown" origination is the EES methodology as adopted by the FCC and referenced in SWBT's Tariff F.C.C. No. 73.**

For those calls where the originating geographic location is unknown, the FCC has created a proxy in order to supply the missing information; this proxy is required to be incorporated into SWBT's Tariff F.C.C. No. 73. In such cases, the FCC uses the first clearly identifiable location within the transit of the call: the first point at which the call is encountered by the long distance telephone company. This "network entry" point is deemed to be the originating point of the call for purposes of jurisdictional analysis where the actual location is unknown, and the process by which such points are identified is referred to as the "Entry-Exit

¹² *Joint Board Recommended Decision and Order.*

¹³ 47 U.S.C. §§ 152, 410.

¹⁴ *Joint Board Recommended Decision and Order* at ¶ 13.

Surrogate" ("EES") method.

SWBT incorporated into its Tariff F.C.C. No. 73 a set of mandatory procedures in order to implement this EES methodology. These procedures include, among other things, reliance upon PIU reports, which are prepared by IXC's on a regular basis to calculate the percentage of interstate telephone calls. SWBT is required by the Communications Act to abide by these mandatory procedures contained in its Tariff F.C.C. No. 73.

Consistent with the SWBT Tariff F.C.C. No. 73, Global Crossing has calculated and calculates its quarterly PIU pursuant to the SWBT Tariff F.C.C. No. 73, which provides, in pertinent part:

Pursuant to Federal Communications Commission Order FCC 85-145 (adopted April 16, 1985), when the customer does not have sufficient data to determine jurisdiction, the percent interstate usage is to be developed as though every call that *enters the customer's network* at a point within the same state as that in which the called station is situated (as designated by the called station number) is an intrastate communication. Every call for which the *point of entry* is in a state other than that where the called station is situated (as designated by the called station number) is an interstate communication.

SWBT's Tariff F.C.C. No. 73, § 2.4.1(A)(1) (italics added).

The reference to FCC "Order FCC 85-145" is to the Commission's orders in *In re MCI Telecommunications Corp. Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*.¹⁵ In that Order, the Commission first adopted the EES method as the appropriate means of jurisdictional separations for certain access traffic. SWBT's federal tariff specifically requires the use of this method of jurisdictional separations for certain

¹⁵ *Memorandum Opinion and Order*, 57 Rad. Reg. 2d (P & F) 1573 ("1985 EES Order"), *recon. denied*, *Memorandum Opinion and Order on Reconsideration*, 59 Rad. Reg. 2d (P & F) 631 (1985) ("1985 EES Reconsideration Order").

FGD services, the access services purchased by Global Crossing.¹⁶

In the 1985 EES Order, the Commission initially phrased the EES methodology as follows:

We are, therefore, of the view that interstate usage generally ought to be estimated as though every call that *enters an OCC* [other common carrier] *network* at a point within the same state as that in which the station designated by dialing is situated were an intrastate communication and every call for which the *point of entry* is in a state other than that where the called station is situated were an interstate communication.

1985 EES Order at ¶ 25 (emphasis added). The Commission has directed that all LECs, including SWBT, use the EES methodology in their federal interstate access tariffs.¹⁷

Subsequent statements of the Commission confirm this interpretation and its facially apparent meaning. Indeed, a later Commission description of EES makes it plain that a call's point of entry into a carrier's network is the linchpin of the methodology: "Under the EES, access customers designate the jurisdictional status of a call based on the relationship between the point where a call first enters their network (e.g., their POP [point of presence]) and the terminating number."¹⁸

¹⁶ See *SWBT's Tariff F.C.C. No. 73*, § 2.3.1(A)(2)(b) (specifying the determination of PIU for SWBT Terminating Switched Access Service); cf. *id.* § 2.3.10(A)(2) (applying the developed PIU factor to particular services). (Attached B.)

¹⁷ See 1989 EES Order at ¶ 14 ("[W]e direct the LECs to use the EES measurement method in their interstate access tariffs."). Carriers are permitted to substitute a jurisdictional separations methodology different than EES pursuant to certain procedures and conditions. The most important requirement relevant here is that the carrier obtain approval of the substitute method from the Commission. See 1989 EES Order at ¶ 13 (adopting guidelines and process recommended by the Joint Board in the *Joint Board Recommended Order* at ¶ 61, including requirement of Commission approval).

¹⁸ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, *Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rule Making*, 69 Rad. Reg. 2d (P & F) 641, ¶ 66 (1991).

- c) **The Commission should grant Global Crossing's Petition and thereby preclude SWBT from assessing terminating access charges upon Global Crossing in a manner inconsistent with the provisions of its Tariff F.C.C. No. 73.**

In providing jurisdictionally interstate access services, SWBT may not assess a fee for jurisdictionally interstate services under any tariff other than the SWBT Tariff F.C.C. No. 73. Yet, SWBT has charged and continues to charge Global Crossing for the terminating interstate traffic at rates other than those set forth in its Tariff F.C.C. No. 73, *i.e.*, at the rates set forth in its *intrastate* access tariffs.¹⁹ It has done so in circumstances where SWBT agrees that the state from which mobile phone calls were made cannot be determined. Indeed, Global Crossing has alleged in its complaint filed in District Court that, as a result of this practice, SWBT is overcharging Global Crossing as much as \$100,000 per month.²⁰

Here, both parties agree that the origin of the mobile-phone traffic is "unknown."²¹ Thus, Global Crossing asks the Commission to affirm here that in those cases where the originating geographic location of a mobile call is unknown, then SWBT must adhere to the Commission's separations processes and honor the terms of its interstate access tariff, Tariff F.C.C. No. 73, which designates the "network entry" point as the originating point of the call for purposes of jurisdictional analysis.

3. **This Petition for Declaratory Ruling does not implicate prospective Commission policy or any pending rulemaking or other request for relief.**

This Petition asks a single simple and straightforward question: under current law and

¹⁹ 47 U.S.C. § 152(b).

²⁰ Attachment A, 1.

²¹ "Defendant's Memorandum of Law in Support of its Motion to Dismiss Based Upon the Doctrine of Primary Jurisdiction," *Global Crossing v. SWBT*, at 5 (attached at A, 3).

regulations, does Section 2.4.1(A)(1) (where the origination point is "unknown") or Section 2.4.1.(A)(2)(a) (where the origination point is "known") of SWBT's federal access Tariff No. 73 apply to calls originated from mobile phones where all parties agree the actual location of the calling party is unknown? To the extent that SWBT contends that broader policy issues should be addressed, Global Crossing submits that any prospective change in policy is irrelevant here and will serve only to confuse and delay the court referral process. This request for declaratory ruling does not implicate prospective Commission policy or relate to any pending rulemaking or other request for relief.²² SWBT is free to advocate for future policy changes to its heart's content, just not here where the only issue raised is which existing tariff provision applies today? Global Crossing is currently being overbilled a substantial amount – \$100,000 per month – under a clear misreading of SWBT's tariff. Deliberations or changes in policy can be made prospectively and do not affect the nature or substance of the declaratory relief requested by Global Crossing here.

Conclusion

By promptly issuing the requested declaratory ruling, the Commission will appropriately respond to the referral by the United States District Court for the Eastern District of Missouri, remove any uncertainty surrounding the Commission's EES methodology and its appropriate application in SWBT Tariff F.C.C. No. 73 as applied to mobile phone calls handled by Global Crossing, and permit Global Crossing's action in federal court to move forward.

²² In particular, this request for declaratory ruling is not influenced by request's for relief and pending policy decisions that will result from the intercarrier compensation proceeding. See Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92.

Therefore, for the foregoing reasons, Global Crossing respectfully requests that the Commission give definitive meaning to the provisions of SWBT's Tariff F.C.C. No. 73 as discussed herein.

Respectfully submitted,



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October 27, 2004

CERTIFICATE OF SERVICE

The undersigned, of the law firm Kelley Drye & Warren LLP, hereby certifies that s/he has served a copy of the foregoing **Petition for Declaratory Ruling** by placing a copy in the United States mail, first-class postage prepaid, addressed as follows:

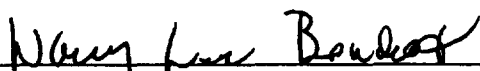
Marlene H. Dortch, Secretary*
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

James P. Lamoureux
SBC Communications
1401 Eye Street, N.W.
Suite 400
Washington, D.C. 20005

Anthony DeLaurentis
Enforcement Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Michael J. Shortley, III
Global Crossing Telecommunications, Inc
1080 Pittsford-Victor Road
Pittsford, New York 14534

This the 27th day of October, 2004.



Nancy Lee Boudrot

* By Hand Delivery

Attachment A

A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

MAR 17 2004

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

GLOBAL CROSSING
TELECOMMUNICATIONS, INC.,
a Michigan corporation,

Plaintiff,

v.

SOUTHWESTERN BELL TELEPHONE, L.P.,
a Texas limited partnership,

Defendant.

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Case No. 04CV00319ERW

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Global Crossing Telecommunications, Inc. ("Global Crossing"), for its
Complaint against defendant Southwestern Bell Telephone, L.P. ("SBT"), states as follows:

PARTIES

1. Global Crossing is a Michigan corporation with its principal place of business at 1080 Pittsford-Victor Road, Pittsford, New York. Global Crossing is a nationwide interexchange carrier ("IXC") that is certificated and authorized by the Federal Communications Commission ("FCC") to provide, among other services, long distance telephone services in the various states serviced by SBT, including Arkansas, Kansas, Missouri, Oklahoma, and Texas.

2. Defendant SBT is a Texas limited partnership with its principal place of business at 530 McCullough, San Antonio, Texas. SBT is authorized to do business and does substantial business in Missouri. SBT, in particular, provides interstate telephone access services under federal tariffs and is known in the industry as an "incumbent local exchange carrier" or "ILEC," that is certificated and authorized by the FCC to provide, among other services, access to facilities for interstate telephone services to IXCs, such as Global Crossing.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1337 (2002) (federal question and regulating interstate commerce) because the matter concerns the duties, charges, and liabilities arising under the Federal Communications Act of 1934, as amended, 47 U.S.C. §§ 151 et seq. (the "FCA"), and the relevant tariffs filed by SBT under the FCA and under 28 U.S.C. § 1332 (diversity), because of citizenship and the amount in controversy exceeds \$75,000. Global Crossing seeks a declaratory judgment and injunctive relief under 28 U.S.C. §§ 2201 and 2202 (2002).

4. Venue is proper in this Court under 28 U.S.C. § 1391 (2002).

BACKGROUND

5. Cellular and other wireless mobile telephones are assigned standard telephone numbers with a particular geographic designation. For example, a wireless mobile phone purchased in Missouri could have a number beginning with the local 314 area code. Mobile phone customers, however, make calls to phones with different area codes as readily as to phones with the same area code. Interconnection of wireless networks with the "plain old telephone system" ("POTS") allows mobile phone users to make a call while within or outside of the area code region associated with their mobile phone. A Missouri wireless phone customer with a Missouri area code (314), for example, can just as easily call a SBT customer in Missouri while in Missouri as he could that same SBT customer in Missouri while traveling in Kansas. In both cases, the area codes of the originating *and* terminating telephone numbers will be the same, even though one call is interstate and the other is not.

6. Although the underlying process of connecting both types of calls – local and long distance calls – is not apparent to the customer, there is a difference in the manner in which the mobile telephone company handles local wireless calls (calls while located within the same

area code region) and long distance wireless calls (calls made while located in different area code regions). The interstate, long distance call often requires the mobile phone company to contract with an interstate long distance carrier, such as Global Crossing, to connect the call in the long distance location.

7. Global Crossing is a telecommunications carrier that provided and provides wholesale long distance service for mobile telephone companies. In order to complete the interstate, long distance portions of mobile phone calls, Global Crossing must provide three general functions: (1) pick up the call from the wireless carrier, (2) carry the call to the state in which the called party is physically located, and (3) deliver the call to the local telephone company – the ILEC – where the called person is physically located. Global Crossing is charged by the local phone company for the third function. This charge is referred to as a “termination fee” or “terminating access.”

8. SBT provided and provides terminating access services to Global Crossing pursuant to the FCA and SBT’s Interstate Tariffs, as amended and filed with the FCC in accordance with the FCA. Global Crossing utilizes these services as part of the telecommunications services that it provides to wireless carrier customers throughout the states serviced by SBT.

9. In accordance with the SBT Interstate Tariffs, Global Crossing purchased terminating access services from SBT. The terminating access services provide Global Crossing with the “last mile,” or local portion, of the interstate long distance calls placed from the mobile phones served by the wireless companies that use Global Crossing long distance services.

10. The amount charged to Global Crossing by SBT for terminating the mobile phone calls to a customer on the SBT local exchange network depends upon whether SBT is